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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,272	03/01/2004	Robert L. Packer	6533/53815	9534
30505	7590	09/28/2004	EXAMINER	
MARK J. SPOLYAR 38 FOUNTAIN ST. SAN FRANCISCO, CA 94114				MARCELO, MELVIN C
		ART UNIT		PAPER NUMBER
				2663

DATE MAILED: 09/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

A

Office Action Summary	Application No.	Applicant(s)	
	10/790,272	PACKER, ROBERT L.	
	Examiner	Art Unit	
	Melvin Marcelo	2663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 01 March 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 20-49 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 40 and 41 is/are allowed.

6) Claim(s) 20-39,42-45 and 47-49 is/are rejected.

7) Claim(s) 46 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 01 March 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>03/2004</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 20-39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Newly added independent claims 20, 29, 30, 36 and 39, in line 5, recite “a target bandwidth.” However, the examiner could not find any references in the specification nor the drawings for the phrase; instead, the original disclosure uses the terms “target rate” or “target data rate.”

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 47 and 48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 47, line 1, “the measured data rate” lacks a proper antecedent basis; the phrase should be rewritten as --a measured data rate--.

Claim 48, line 1, “the round trip time” lacks a proper antecedent basis; the phrase should be rewritten as --a round trip time--.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 42-45 and 49 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 18/17 of U.S. Patent No. 6,741,563. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious for a skilled artisan to delete limitations in a patented claim for the reason that the current claims are open-ended and thus, would not have excluded those limitations. A side by side comparison for application claim 42 and patent claim 18/17 shows that the each limitation in the application claim has a corresponding limitation in the patent, wherein a node and transmission station are equivalent. Similar comparisons can be done with the other claims, while with respect to claim 44, it would have been obvious to use the TCP protocol since it is a well known protocol for use in a packet communication environment.

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<p>42. A method for controlling the rate of data packets transmitted between first and second nodes in a packet communication environment, wherein the first node is operative to transmit at least one packet associated with a flow to the second node, and wait for acknowledgment of at least one transmitted packet before transmitting subsequent packets associated with the flow, said method comprising: forwarding at least one packet corresponding to a flow from a first node to a second node; receiving an acknowledgment packet from the second node to the first node, the acknowledgment packet acknowledging at least one packet in the flow transmitted from the first node, wherein the acknowledgment packet received from the second node includes a window size indicator that specifies an allowable range of transmission of data beyond a range of data acknowledged as a window size to be advertised from said second node to said first node; selecting a substitute window size indicator for said window size indicator to modify the rate of transmission of packets from the first node; inserting said substitute window size indicator into said acknowledgment packet; and</p>	<p>17. A method for controlling the rate of data packets transmitted between first and second transmission stations in a packet communication environment, wherein the first transmission station is operative to transmit at least one packet associated with a flow to the second transmission station, and wait for acknowledgment of at least one transmitted packet before transmitting subsequent packets associated with the flow, said method comprising: forwarding at least one packet corresponding to a flow from a first transmission station to a second transmission station; receiving an acknowledgment packet from the second transmission station to the first transmission station, the acknowledgment packet acknowledging the at least one packet from the first transmission station; 18. The method of claim 17 wherein the acknowledgment packet received from the second transmission station includes a window size indicator that specifies an allowable range of transmission of data beyond a range of data acknowledged as a window size to be advertised from said second data transmission station to said first data transmission station, wherein the method further comprises: selecting a substitute indicator for said window size indicator based on the target rate corresponding to the flow; and inserting said substitute indicator into said acknowledgment packet.</p>

forwarding the acknowledgment packet to the first node.	(inherent since the acknowledgment packet is received at the first transmission station--see above)
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Allowable Subject Matter

7. Claims 40 and 41 are allowed.
8. Claim 46 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. Claims 47 and 48 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
10. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to anticipate or make obvious the features in claim 40 of deleting or forwarding a retransmission of the first data flow based on the acknowledgment of the first data flow stored in a memory and in claims 46-48 of computing the substitute window size indicator based on an attribute metric of the communications path.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin Marcelo whose telephone number is 571-272-3125. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on 571-272-3126. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Melvin Marcelo
Primary Examiner
Art Unit 2663

September 23, 2004